

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS**

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MICHAEL J. EMMENDORFER, a minor, \*  
through his parent and natural guardian, \*  
ALAN P. EMMENDORFER, \*

No. 99-553V  
Special Master Christian J. Moran

Petitioner, \*

Filed: October 18, 2006

v. \*

SECRETARY OF HEALTH \*  
AND HUMAN SERVICES, \*

Judgment on the record; hepatitis B;  
juvenile rheumatoid arthritis; denial  
of compensation.

Respondent. \*

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*Clifford J. Shoemaker, Shoemaker and Associates, Vienna, Virginia for petitioner*  
*Vincent J. Matanowski, United States Dep't of Justice, Washington, D.C. for respondent*

**UNPUBLISHED DECISION<sup>1</sup>**

On August 2, 1999, Alan P. Emmendorfer, on behalf of his son Michael, filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“the Program”). 42 U.S.C. §§ 300aa-1 *et seq.* Mr. Emmendorfer alleged that the hepatitis B vaccine, which Michael received on September 11, 1996 and November 20, 1996, caused him to suffer an “adverse reaction.” Petition (“Pet.”) at ¶ 3.

On September 8, 2006, Mr. Emmendorfer filed a Motion for a Ruling on the Record. This motion is GRANTED. The Court finds that the information on the record does not show entitlement to an award under the Program. Petitioner’s claim for compensation is hereby DENIED.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

## **I. FACTS**

Michael was born on April 19, 1991. Exhibit 2, Affidavit of Alan Emmendorfer, dated May 19, 2006, ¶ 3. Mr. Emmendorfer is Michael's father. Id. ¶ 1. No one previously filed an action for compensation for Michael's injuries. Id. ¶ 2.

On September 11, 1996 and November 20, 1996, Michael received the hepatitis B vaccine. Exhibit 3 at 3. He received these vaccinations in New Mexico. Id., see also exhibit 2 ¶ 5.2.

On October 25, 1996, Michael saw Dr. Preston Harrington, a pediatrician. Michael, who was then 5 years old, complained about a swollen right knee. Exhibit 1 at 2. After a series of visits, Dr. Harrington detected thickening in his synovium without redness or swelling. Dr. Harrington stated that Michael's problem was probably secondary to juvenile rheumatoid arthritis. Id. at 5. On January 6, 1997, Michael was seen by Dr. Roger Hollister, a professor of pediatrics at the University of Colorado School of Medicine. Dr. Hollister confirmed the diagnosis of juvenile rheumatoid arthritis, pauciarticular type. Exhibit 7 at 94-96.

Michael received care and he improved. On January 11, 1997, a physical therapist stated that Michael had an "appropriate level of functioning." Exhibit 6 at 7. On February 19, 1997, Dr. James Fisk stated that he was "doing quite well." Exhibit 1 at 8. On July 25, 1997, Dr. Hollister stated that his arthritis was "nearing remission." Exhibit 7 at 91. On October 14, 1997, Dr. Fisk observed that Michael possessed nearly a full range of motion and assessed Michael's condition as remitting juvenile rheumatoid arthritis. Exhibit 1 at 11.

Despite Michael's improvements, he sometimes experienced problems with his juvenile rheumatoid arthritis. Exhibit 2 ¶ 5.8. For example, on April 7, 1998, Michael and his mother complained that he was experiencing a great deal of pain. Exhibit 1 at 13.

On September 24, 1999, Dr. Preston Harrington, a pediatrician, noted that Michael developed juvenile arthritis after receiving two doses of the hepatitis B vaccine. Dr. Harrington recommended that Michael not receive a third dose. Despite this recommendation, Dr. Harrington did not assert that the hepatitis B vaccine caused the juvenile arthritis. Exhibit 1 at 1.

On December 2, 1999, Michael saw Dr. Suzanne Curtis Gray, a rheumatologist. Exhibit 1 at 18. Dr. Gray's review of Michael's musculoskeletal system showed that Michael was generally normal, except that he had difficulty making fists due to swelling in both hands. Exhibit 1 at 20.

Periodically, Michael has seen doctors for follow up care of his arthritis. Exhibit 7 passim. As recently as August 23, 2006, Michael received care for his arthritis. Exhibit 7 at 10. Although Michael's doctors monitored his arthritis and sometimes adjusted or changed his medication, none of the doctors offered any theories as to what caused the arthritis.

As mentioned, Mr. Emmendorfer filed a petition in August 1999. He filed the first set of medical records in May 2006. In a status report filed on August 30, 2006, Mr. Emmendorfer's attorney represented that his client decided not to pursue this case. On September 28, 2006, Mr.

Emmendorfer filed the last set of medical records and also filed a motion for judgment on the record.

In the motion for judgment on the record, Mr. Emmendorfer recognized that he could not prevail because he “cannot find an expert to support causation in [this] case.” On September 25, 2006, respondent filed its response to the motion for judgment.

## II. ANALYSIS

To receive compensation under the Program, Mr. Emmendorfer must prove either: (1) that Michael suffered a “Table Injury”--*i.e.*, an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or (2) that he suffered an injury that was actually caused by a vaccine. See 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1); Capizzano v. Sec’y of Health and Human Servs., 440 F.3d 1317, 1320 (Fed. Cir. 2006). Here, Mr. Emmendorfer does not claim that Michael suffered a table injury. Thus, he must prove causation in fact.

A petitioner may not be given a Program award based solely on the petitioner’s claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. 42 U.S.C. § 300aa-13(a)(1). In determining whether a petitioner is entitled to compensation, the special master shall consider all material contained in the record. 42 U.S.C. § 300aa-13(b)(1). This universe necessarily includes “any . . . conclusion, [or] medical judgment . . . which is contained in the record regarding . . . causation . . . of the petitioner’s illness.” 42 U.S.C. § 300aa-13(b)(1)(A). Here, because the medical records do not seem to support Mr. Emmendorfer’s claim, a medical opinion must be offered in support. Mr. Emmendorfer, however, has offered no such opinion.

The records are sufficiently developed that a decision made be made as to whether Mr. Emmendorfer is entitled to a Program award. See 42 U.S. C. § 300aa-12(d)(3)(B)(v); Vaccine Rule 8(b).

To prove causation in fact, a petitioner must establish at least three elements. The petitioner’s

burden is to show by preponderant evidence that the vaccination brought about [the] injury by providing: (1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury.

Althen v. Sec’y of Health and Human Servs., 418 F.3d 1274, 1278 (Fed. Cir. 2005). Proof of medical certainty is not required; a preponderance of the evidence suffices. Bunting v. Sec’y of Health and Human Servs., 931 F.2d 867, 873 (Fed. Cir. 1991).

The records do not support a judgment in favor of Mr. Emmendorfer because he has failed to establish any of the three prongs required by Althen. The medical records do not indicate that any of Michael's treating physicians linked his juvenile rheumatoid arthritis to the hepatitis B vaccination. While Mr. Emmendorfer's motion does not cite any exhibits in support of his petition, the strongest statement in Mr. Emmendorfer's favor appears to be Dr. Harrington's letter, dated September 29, 1994. At best, this letter asserts that according to Michael's mother, Michael's arthritis developed after he received the first hepatitis B vaccination and got worse after the second. Exhibit 1 at 1. This letter does not satisfy Mr. Emmendorfer's burden as defined by Althen. The letter does not offer a medical theory, it does not explain why the hepatitis B vaccination was the reason for the injury, and it does not advance an opinion about the appropriate temporal relationship. See id. Moreover, Mr. Emmendorfer has failed to present the opinion of an expert witness offering a medical theory connecting the hepatitis B vaccination to the juvenile rheumatoid arthritis. See Motion for Judgment on the Record, filed September 8, 2006. Consequently, Mr. Emmendorfer has not met his burden of proof.

For this reason, petitioner's claim for compensation is hereby DENIED. In the absence of a motion for review, the Clerk of the Court shall enter judgment in favor of the respondent.

IT IS SO ORDERED.

S/ Christian J. Moran

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Christian J. Moran  
Special Master